COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 145 of 2004

United India Insurance Co. Ltd. … **Appellant.**

Versus

Smt. Sarawswati Devi
and others. … **Respondents.**

And

Appeal from Order No. 189 of 2004

Smt. Saraswati Devi & others. … **Appellants.**

Versus

Ravindra Bajaj
and another. … **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Both these appeals under Section 173 of the Motor Vehicles Act 1988 ***(in short the Act)*** arise out of the same motor accident and have been preferred against the same impugned judgment and award, therefore, they are being decided by this common judgment.

A.O. 145 of 2004 has been preferred by the Insurance Company against the judgment and Award dated 12-3-2004 passed in M.A.C. Petition No., 168 of 1998, Smt. Saraswati Devi & others Vs. Sri Ravindra Bajaj & another, by Motor Accident Claims Tribunal/Addl. District Judge, I F.T.C. Nainital ***(in short the Tribunal),*** whereby the learned Tribunal has allowed the claim petition and awarded Rs.2,98,000/- as compensation along with interest @ 7% per annum, as mentioned in the impugned order, in favour of the claimant-respondent Nos. 1 to 6 under Section 166 of the Act. Aggrieved, the Insurance Company-appellant has come up

in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the driver of the bus No. UP 22/3963 was not holding a valid and effective driving licence on the date of accident, rather the driving licence was a fake one, thereby there was breach of policy conditions and that the quantum of award is exorbitant and the Tribunal h as failed to appreciate the evidence on record.

By A.O. No. 189 of 2004, the claimant-appellants have challenged the findings of the Tribunal and have prayed for enhancement of the compensation amount mainly on the ground that the proved income of the deceased Ramroop Yadav was not considered by the Tribunal and proper multiplier was not applied by the Tribunal, therefore, the compensation awarded is insufficient and inadequate.

Brief facts of the case are that ram Roop Yadav alias Ramu (the deceased) was going on foot on the road on 12.9.1997 along with h is buffalo towards Bhagwanpur Livestock Hospital. At about 9.30 a.m. a bus no. U.P. 22-3963 driven rashly and negligently came from the side of Rudrapur hit the deceased and his buffalo on wrong side, with the result the deceased sustained grievous injuries. He was rushed to Government Hospital, where he was declared dead by the doctors. Report of the accident was lodged with the police. The deceased was aged about 48 years and was a skilled labour earning Rs. 120.36 per day. Hence the claim petition was filed by his dependents/legal heirs. Both the opposite parties contested the claim petition by filing separate written statements. O.P. No.1 has asserted that the accident was caused due to own negligence on the part of the deceased. The driver was holding a valid driving licence on the date of accident and the bus in question was duly insured with the United India Insurance Co. Ltd. The O.P. No.2-Insurance Company has pleaded that the claim petition has been field in collusion with the owner of the vehicle and the owner was not possessing valid papers in respect of the vehicle involved in the

accident and that the amount of compensation claimed is excessive and without any basis.

The learned Tribunal framed four Issues in the case. Ultimately, the Tribunal has come to t he conclusion that the deceased has died as a result of injuries sutained by him due to rash and negligent driving by the driver of bus No. U.P. 22-3963 and ultimately, the Tribunal has awarded compensation of Rs. 2,98,000/- in favour of the claimants against the Insurance Company.

We have herd learned counsel for the Insurance Company, Mr. Prabhat Pande, as well as learned counsel for the claimants, Mr. Lalit Sharma, Advocate, and learned counsel for owner of the vehicle-respondent, G.S.Sandhu, and have carefully gone through the entire material on record.

In the appeal preferred by the Insurance Company, it has been submitted by the learned counsel for the appellant that in this case, the driver of the bus involved in the accident was not holding a valid driving licence, therefore, the bus was being driven in breach of the policy conditions as provided under Section 149(2)(ii) of the policy conditions that the report of Licensing Officer was also not considered by the learned Tribunal, which clearly proves that the driving licence was fake. We have perused the entire record including the impugned judgment and award. We find that the Insurance Company has filed Verification Report date 12.1.2000 of Sri Brijesh Kumar, Surveyor & Loss Assessor of the Insurance Company and report of the Licensing Authority dated 12.12.2000, in which it has been mentioned that D.L. No. M-1872/S/89 was not issued on 6.12.89 from its office at Saharanpur. From a perusal of the impugned judgment, it comes out that the learned Tribunal has framed Issue Nos. 2 and 3 in respect of insurance of the vehicle no. UP 22-3963 on the date of accident and plying of the vehicle according to policy conditions. It is true that the Insurance Company has not adduced any oral evidence in support

of its case before the Tribunal. The Tribunal ought to have recorded categorical findings in respect of Issue Nos. 2 and 3, which related to the most important aspects of the case. No discussion has been made by the Tribunal in respect of the aforesaid two papers filed by the Insurance Company. It appears to us that the Tribunal lost sight of Issue No.2 at the time of disposing of Issue framed in the case. From a careful scrutiny, we also find that the Tribunal has nowhere recoding finding on the Issue No.3, ***whether on the date of accident, bus No. U.P. 22/3963 was being driven in accordance with the conditions of the Insurance Policy? If not, its effect?*** In view of all these circumstances, in the interest of Justice, we have no option but to remand the case for decision afresh on Issue Nos. 2 and 3. The Appeal No. 145 of 2004 preferred by the Insurance Company deserves to be allowed. However, in view of the decision of the Hon'ble Supreme Court in the case of ***"National Insurance Company Limited Vs. Swaran Singh and others" [2004(3), Supreme Court Cases, 297),*** the appellant-Insurance Company is directed to satisfy the entire amount under the impugned award before the Motor Accident Claims Tribunal concerned before the case is proceed with by the learned Tribunal. The Tribunal shall afford opportunity of hearing to the appellant and owner of the vehicle/bus no. U .P. 22-3963 both.

A.O. No. 145 of 2004 is allowed to the extent that the Tribunal shall record findings on Issue Nos. 2 and 3 afresh. The case is remanded to the learned Tribunal for decision afresh in the light of the observations aforementioned and in accordance with law. The learned Tribunal shall expedite disposal of the petition as early as possible. No order as to costs.

In view of our remand order, mentioned above, the appeal ***(A.O. No. 189 of 2004)*** preferred by the claimants for enhancement of compensation amount is dismissed. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

01-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP